

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)	
)	
Jonathan Merical)	Case No. 10-80671 C-13D
Natalie Merical)	Chapter 13
)	
Debtors.)	
)	

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND CODEBTOR STAY
OR FOR ADEQUATE PROTECTION**

Santander Consumer USA, Inc. (hereinafter "Santander"), servicer for Sovereign Bank, a creditor in the above-captioned proceeding, moves this Court, pursuant to Sections 361, 362 and 1301 of the Bankruptcy Code and Rules 4001, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure, for modification of the automatic stay and codebtor stay so as to permit Santander to exercise its rights with regard to certain property hereinafter described or, in the alternative, for adequate protection. In support of this Motion, respectfully shows unto this Court as follows:

1. The above referenced Debtors (hereinafter "Debtors") filed a petition under Chapter 13 of the Bankruptcy Code on April 16, 2010 (the "Petition Date").
2. Santander possesses a secured claim against Natalie Merical and Amanda Jackson (hereinafter "Codebtor").
3. On or about September 25, 2007, Rick Hendrick Chevrolet - Durham loaned to Natalie Merical and the Codebtor the principal sum of \$9,205.94, and, as evidence of the obligation to repay such amount to Rick Hendrick Chevrolet - Durham, Natalie Merical and the Codebtor executed and delivered to Rick Hendrick Chevrolet - Durham a Retail Installment Sale Contract (hereinafter "Agreement"), dated September 25, 2007, in the original, principal amount of \$9,205.94. The Agreement provides for monthly payments in the amount of \$191.76. A true and correct copy of the Agreement is attached hereto as Exhibit A and incorporated herein by reference.

4. Rick Hendrick Chevrolet - Durham assigned the Agreement to Sovereign Bank.
5. As security for the indebtedness owed to Sovereign Bank, Natalie Merial and the Codebtor granted to Sovereign Bank a security interest in a 2004 Chevrolet Aveo, Serial Number KL1TD52654B131166 (hereinafter "2004 Chevrolet Aveo"). Sovereign Bank perfected its security interest by placing a lien against the title to the 2004 Chevrolet Aveo as evidenced by a notation of a first lien on the Certificate of Title. A true and correct copy of the Certificate of Title is attached hereto as Exhibit B and incorporated herein by reference.
6. Natalie Merial and the Codebtor are in default of the obligation under the Agreement and the confirmed Chapter 13 Plan by failing to pay to Santander installments of principal and interest due. The Debtors' Plan provides for direct payments to Santander from the Codebtor.
7. As of August 23, 2011, Natalie Merial and the Codebtor were indebted to Santander in the amount of \$3,865.29 as provided by the Agreement, plus interest, late charges and other applicable fees.
8. As of August 23, 2011, Natalie Merial and the Codebtor were in arrears in post-petition payments to Santander in the amount of \$733.16. An additional payment will likely become due prior to the anticipated hearing on Santander's Motion.
9. As of August 2011, the trade-in value of the 2004 Chevrolet Aveo is \$3,175.00. A true and correct copy of an NADA Official Used Car Guide is attached hereto as Exhibit C and incorporated herein by reference.
10. Santander does not have and has not been offered adequate protection for its interest in the 2004 Chevrolet Aveo. Furthermore, Codebtor is failing to comply with the confirmed Chapter 13 Plan. Consequently, cause exists to grant Santander relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code.
11. No equity exists in the 2004 Chevrolet Aveo, and the 2004 Chevrolet Aveo is not necessary for an effective reorganization of the Debtors. Consequently, cause exists to grant Santander relief from the automatic stay pursuant to Section 362(d)(2) of the Bankruptcy Code.

12. If Santander is not permitted to exercise its right with regard to the 2004 Chevrolet Aveo pursuant to the loan and security documents, the interest of Santander will be irreparably harmed.

13. Good cause exists to grant Santander relief from the codebtor stay.

WHEREFORE, Santander respectfully prays unto this Court as follows:

1. That the automatic stay and codebtor stay be modified or lifted pursuant to Sections 362(d) and 1301 of the Bankruptcy Code to allow Santander to exercise its rights under the loan and security documents with regard to the 2004 Chevrolet Aveo and that Santander be allowed to file a proof of claim for any deficiency balance; and

2. Alternatively, that Santander be provided adequate protection of its interest in the Santander by requiring the Codebtor immediately to cure the post-petition arrearage in payments and that Santander be granted immediate relief from the automatic stay and codebtor stay without further notice or order in the event that any future payment is in default more than ten (10) days;

3. That the Court order that any order entered on the instant Motion is immediately effective and enforceable upon entry, pursuant to Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure; and

4. For such other and further relief as to the Court may seem proper.

Respectfully submitted, today, August 23, 2011.

/S/ James E. Vaughan

James E. Vaughan

North Carolina Bar No. 12669

Attorney for Santander Consumer USA, Inc.

OF COUNSEL:

JAMES E. VAUGHAN, ATTORNEY AT LAW, P.C.

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DISCLOSURE OF CORPORATE PARENT

Santander Consumer USA, Inc. is a privately held company owned by Banco Santander Centro Hispano SA (STD) and management.

Dated: August 23, 2011.

/S/ James E. Vaughan

James E. Vaughan

North Carolina Bar No. 12669

Attorney for Santander Consumer USA, Inc.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND CODEBTOR STAY OR FOR ADEQUATE PROTECTION and DISCLOSURE OF CORPORATE PARENT** were served upon the following parties by mailing such copy by first class, postage prepaid mail, addressed as follows:

ADDRESSEES:

Jonathan Merical
Natalie Merical
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John T. Orcutt, Esq.
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Notice electronically sent to:

John T. Orcutt, Esq.
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Richard M. Hutson, II, Esq.
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Dated: August 23, 2011.

/S/ James E. Vaughan

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